

WORKER'S COMPENSATION INSURANCE COVERAGE- ADDITIONAL INFORMATION

Worker's compensation insurance must be addressed for all timber sales. The contractor/purchaser must provide proof of current workers compensation insurance coverage for all of their employees; and the coverage must be in force while any operations (including but not limited to road building or maintenance, cutting, skidding, hauling, machinery repair, etc.) on the contracted timber tract are active. This coverage must be evidenced by submission of an original Certificate of Insurance provided by the insurance company naming the Department as a certificate holder.

The administering forester must check with the contractor on or before the expiration date of the Certificate to determine whether the coverage has been changed or renewed. Minimum coverage limits on worker's compensation policies are mandated by statute. If the coverage at any time cannot be confirmed, the sale should be stopped until an acceptable Certificate of Insurance is provided by the contractor.

Exception to this Coverage Requirement

Many contractor/purchasers do not have any employees and therefore do not carry workers compensation insurance coverage. These purchasers can claim exemption from worker's compensation insurance requirements if the business entity they operate does not have any employees and the purchaser attests to not having employees by affidavit. This option is available only to purchasers without any employees.

To document their exempt, independent status, **the contractor/purchaser will be required to submit a signed, notarized affidavit** that affirms their exempt status pursuant to the criteria listed in section 102.07(7)(b), of the Wisconsin Statutes. The insurance exemption affidavit form can be found in the Public Lands Toolkit website on the DNR intranet.

Additional Information regarding "Independent Contractors"

The term "Independent Contractor" is often used to describe the relationship between various persons engaged in a timber harvest. Foresters need to be aware that simply calling someone an independent contractor does not make the person an independent contractor in fact. Instead, there are nine criteria that must be met to consider a person an independent contract and not an employee. Section 102.07 (8)(b) of the Wisconsin Statutes requires all of the following conditions to be met in order to label someone an independent contractor:

- a. Maintains a separate business with his or her own office, equipment, materials and other facilities.
- b. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the previous year.
- c. Operates under contract to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the service or work.
- d. Incurs the main expenses related to the service or work that he or she performs under the contract.
- e. Is responsible for the satisfactory completion of services or work that he or she contracts to perform and is liable for a failure to complete the service or work.
- f. Receives compensation for service or work performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
- g. May realize a profit or suffer a loss under contracts to perform services or work.
- h. Has continuing or recurring business liabilities or obligations.
- i. Depends on the relationship of business receipt to expenditures for the success or failure of the business.

Foresters are not expected to analyze and determine whether a person meets the requirements for being an independent contractor. Instead, Foresters should be aware of what the criteria are for labeling someone an independent contractor and make note of a relationship that loses this identity and becomes an employer-employee relationship.

The independent contractor status is important at two stages of the timber sale:

- a. First, the DNR timber sale contract declares that all purchasers are independent contractors of the Department. As mentioned above, simply saying it does not make it true. Therefore, it is necessary for Foresters administering timber sales to be aware of the independent contractor criteria found in s. 102.07 (8)(b) and make sure the relationship between the Purchaser and the Department meets that standard. Foresters should also be familiar with section 23 of the Timber Sales Contract. This section affirms that direct supervision of personnel and activities “on the job” is the responsibility of the purchaser (i.e. independent contractor) and not the seller.
 - b. The second place where “independent contractors” may appear is between the Purchaser and any people doing work for the Purchaser. Purchasers may label would-be employees as independent contractors as a means of avoiding the workers compensation insurance requirements (as well as other reasons). Foresters should be aware of the Purchaser’s use of independent contractors, especially if the Purchaser has signed the affidavit and not provided proof of workers compensation insurance.
1. Sole Proprietor – Sole proprietor can be a misleading term when used to label Purchasers. Every Forester needs to be aware that sole proprietors may still have employees. As it relates to workers compensation insurance, the critical question is whether the Purchaser has employees, not whether the Purchaser considers themselves a sole proprietor.
 2. Forest Products Permits - Do not require proof of worker's compensation.